

# Montana State Legislature

## **2013 Session**

### **ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLOWING:**

- **Business Report**
- **Roll Call – Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports etc.**
- **Roll Call Votes**
- **Informational Items**
- **Witness Statements**
- **Any Documents; such as;**
  - \***Petitions if any.**
  - \***Any and all material handed end after the meeting ends.**

**The original is on file at the  
Montana Historical Society  
and may be viewed there.**

**Montana Historical Society  
Archives  
225 N. Roberts  
Helena MT 59620-1201  
2013 Legislative Scanner Susie Hamilton**

**BUSINESS REPORT**

**MONTANA SENATE  
63rd LEGISLATURE - REGULAR SESSION**

**SENATE JUDICIARY COMMITTEE**

**Date:** Thursday, March 21, 2013  
**Place:** Capitol

**Time:** 9:00 AM  
**Room:** 303

**BILLS and RESOLUTIONS HEARD:**

HB 522 - Prohibit state cooperation with federal officials regarding indefinite detention - Rep. Nicholas Schwaderer

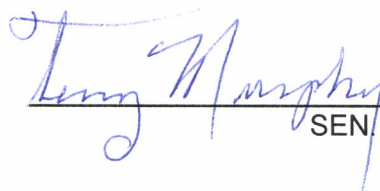
HB 534 - Authorize social benefit corporations - Rep. Kathleen Williams

SB 384 - Revise laws related to the disclosure of an original birth certificate - Sen. Tom Facey

SB 387 - Generally revise commissioner of political practices and enforcement laws - Sen. Debby Barrett

**EXECUTIVE ACTION TAKEN:**

**Comments:**



SEN. Terry Murphy, Chair

# MONTANA STATE SENATE

## 2013 JUDICIARY COMMITTEE

# ROLL CALL

DATE: 3/21/13

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR TERRY MURPHY	—	
VICE CHAIRMAN, SENATOR SCOTT SALES	—	
SENATOR SHANNON AUGARE		—
SENATOR ANDERS BLEWETT	—	
SENATOR SCOTT BOULANGER	—	
SENATOR JOHN BRENDEN		—
SENATOR ROBYN DRISCOLL	—	
SENATOR JENNIFER FIELDER	—	
SENATOR LARRY JENT	—	
SENATOR CLIFF LARSEN	—	
SENATOR CHAS VINCENT		—
SENATOR ART WITTICH	—	



**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE JUDICIARY COMMITTEE**

**Thursday, March 21, 2013**

## HB 522 - Prohibit state cooperation with federal officials regarding indefinite detention

**Sponsor: Rep. Nicholas Schwaderer**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

## SENATE JUDICIARY COMMITTEE

**Sponsor: Rep. Kathleen Williams**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE JUDICIARY COMMITTEE**

**Thursday, March 21, 2013**

**SB 384 - Revise laws related to the disclosure of an original birth certificate**

Sponsor: **Sen. Tom Facey**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**SENATE JUDICIARY COMMITTEE**

Sponsor: **Sen. Debby Barrett**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**MONTANA COUNTY ATTORNEYS ASSOCIATION**  
**34 West Sixth Avenue • Suite 2E**  
**Helena, Montana 59601**

March 20, 2013

In Re: Montana County Attorneys' Association; Legislative Package; 63<sup>rd</sup> Legislature

Dear Senator Wittich:

You recently requested a summary of the MCAA legislative proposals for this session and the status of each of the 5 bills we developed during a retreat this past fall for submission and consideration by this Legislature. This is an attempt to provide a brief, cohesive summation of our efforts in the 63<sup>rd</sup> legislature. These bills represent a non-partisan consensus of Montana County Attorneys developed in the Fall of 2012 with input from our membership throughout the State of Montana. These represent our collective effort to deal with issues and concerns of Montana County Attorneys on a non-partisan basis, keeping in mind, first and foremost the protection of Montana's most vulnerable citizens and the issues faced every day in prosecuting those who would harm or leave very young children in harm's way.

**HB-74: Requires Immediate Notification of Child Abuse or Neglect.**

Sponsor: McDonald (Per L&JIC and HHS)

Statutes Affected: 41-3-205, Confidentiality. 41-3-208, Rulemaking

Purpose: requires "prompt disclosure" to A.G., or Peace Officer or County Attorney or Interdisciplinary Team w/ Law Enforcement member of any reported child abuse and neglect by DP:HHS upon intake; Precludes Dept. holding back information from Law Enforcement while dealing with family and abuser(s)

Status: Passed House Judiciary 17-3; House 54-46; Tabled in Senate Judiciary on 6-6 Vote

**SB-160: Creates Offense of Child Endangerment.** Creates Offense of Criminal Child Endangerment for 1) Failure to Obtain Medical Care of critically injured child; 2) Driving Impaired with child in car; 3) Leaving child in custody or care of known sexual or physical child abuser, 4) failure to provide nutrition to child resulting in failure to thrive

Sponsor(s): Tropiia, Brown, Hollenbaugh, MacDonald, Noonan, O'Hara, Thomas, Van Dyke, Wanzenried

Purpose: new offense for listed crimes against children

Statutes Affected: Enacts new statute in Title 45, Crimes and codification amendment in 46-23-203

Status: Hearing set for 3/21 in House Judiciary; Passed Senate Judiciary 12-0 and Senate 49-0



**SB-198: Revises laws relating to Assault on Minor.** Increases maximum penalties for assault on minor under 36 months of age to 20 years (40 for 2<sup>nd</sup> offense) for causing serious bodily injury.

Sponsor: Thomas

Purpose: Increases penalties for assault on minor under 36 months of age to 20 years (40 for 2<sup>nd</sup> offense) and to 40 years for infliction of serious bodily injury; requires evaluation and compliance with same by offender

Statutes Affected: 45-5-212 (Assault on Minor) and 46-18-111 (Presentence Investigation/Mental and Chemical Eval)

Status: Heard in House Judiciary On 3/12-no action to date; passed Senate Judiciary 12-0 and Senate 47-0

**HB-433: Revises Laws re Registration of Sexual and Violent Offenders.** Requires sexual/violent offender "who is required to register" to register when he leaves county of residence/registration when he departs for new county for 10 consecutive days in County where physically located.

Sponsor: O'Hara

Purpose: Allows local authorities to keep track of comings/goings of registered offenders. Requires offender to continuously keep authorities up to date of whereabouts.

Statutes Affected: 46-23-505 Notice of change of residence address, change of name or employment or transient status.

Status: Referred to Senate Judiciary on 3/8; Passed House Judiciary 20-0; Passed House 100-0

**SB-113: Amend Rules of Evidence re Other Crimes re Sex/Violent Offenses against Children**

Sponsor: Blewett

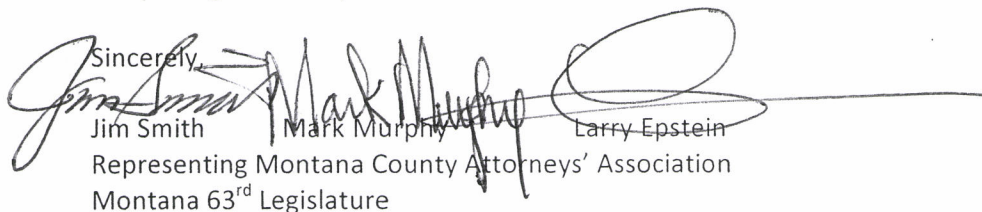
Purpose: Allows evidence of other crimes in prosecution of sexual offenses against child

Statutes Affected: Creates new statutes providing for modification of Montana Rules of Evidence 403 and 404(b) re introduction into evidence of other convictions for child molestation in current case

Status: Tabled in House Judiciary at the request of Sponsor.

As you have pointed out, upon direction from the MCAA Board and Officers, we have appeared before your committee and others to represent law enforcement issues of concern to all County Attorneys this session. The bills described above represent the core of the MCAA legislative package for the 63<sup>rd</sup> Legislature. We greatly appreciate your interest and the concerns of your fellow committee members.

Please let us or your own County Attorney know if you have any further concerns or questions regarding this package of child protection bills.

Sincerely,  
  
Jim Smith      Mark Murphy      Larry Epstein  
Representing Montana County Attorneys' Association  
Montana 63<sup>rd</sup> Legislature

Cc: Senate Judiciary Committee and Staff



Scott Twito  
Yellowstone County Attorney  
217 N 27 Street  
PO Box 35025  
Billings, MT 59107  
Phone: 406-256-2870  
Fax: 406-256-6931

---

March 19, 2013

Dear Chairman Murphy and the Members of the Senate Judiciary Committee,

**RE: HB 74 tied in Committee 6-6.**

HB 74 along with SB 160, SB 198, SB 113, and HB 433 were all bills that were part of the Montana County Attorney's bi-partisan package of bills for 2013 Legislative Session that dealt with the protection of children. Unlike an endorsement of a bill and some supportive testimony at a hearing, these five bills were developed and drafted by multiple county attorneys and an opportunity was given for every county attorney in Montana to comment and work on this legislation. Further an effort was made to have multiple county attorneys, both Republican and Democrat, attend and testify in support of these bills during hearings. As a Republican county attorney from Yellowstone County, I testified at your hearing on SB 113 and at your hearing on HB 74 in February. Unable to personally attend, I also sent one of my child abuse specialists to testify for SB 198 (Thomas) when it was recently heard by House Judiciary. It should be noted that SB 160 (Tropila), SB 198, and SB 113 (Blewett) all passed through the Senate unanimously. HB 433 (O'Hara) also passed the House unanimously.

I strongly urge you to reconsider HB 74. Unfortunately, there seems to be some confusion as to what this important piece of proposed legislation does. Initially, HB 74 came out of the Law and Justice Interim Committee and Representative MacDonald was selected to carry it through the 2013 Session. All HB 74 does is require DPHHS in Helena to timely provide information to your local law enforcement in the most serious cases of child abuse.

County attorneys brought this to the attention of the interim committee when we discovered that oftentimes it would take DPHHS in Helena a week or longer before getting critical information in serious child abuse cases to your local law enforcement so that a proper investigation could begin. Because of this delay we have and will continue to have cases where a proper investigation is compromised. Time delay in investigations can lead to the loss of critical



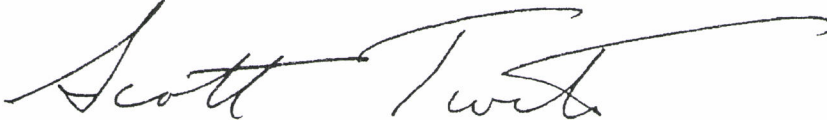
inculpatory and exculpatory evidence, including DNA, text messages, fingerprints, and video surveillance recordings, to name a few.

In addition to the delay problem, before bringing this loophole to the attention of DPHHS and the public through the interim process, I and other county attorneys discovered that on several occasions DPHHS in regional offices would actually withhold information about alleged child abuse from law enforcement to satisfy their agenda. Knowing they have no duty to report to anyone, some DPHHS workers would enter into deals with those alleged child abusers holding the threat of reporting the matter to law enforcement over the alleged abusers' heads to ensure compliance with the social worker's own agenda, even if their agenda was to ignore the law. These "deals" are not reviewed by the Legislature, prosecutors, defense attorneys, or any court of law.

I am the Yellowstone County Attorney. As such, I am responsible to the people in my jurisdiction to protect kids from the most dangerous of our offenders. I can make better decisions in protecting kids with accurate and timely information. HB 74 does this. It is not an effort by any county attorney to replace their judgment for that of a social worker nor is it a bill to allow a county attorney to prosecute more people. It is an effort to protect children and make the best possible decisions that we can when faced with the tremendously difficult cases where children are victimized.

Please reconsider.

Thank you,

A handwritten signature in black ink, appearing to read "Scott Twito", with a long, sweeping horizontal line extending from the end of the name.

Scott Twito  
Yellowstone County Attorney

CC:

Rep. MacDonald, Sponsor HB 74  
Leo Gallagher, President MCAA